## JUDICIAL COUNCIL OF THE TENTH CIRCUIT

IN RE: COMPLAINT UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT

Nos. 10-12-90026 & 10-12-90027

Before **BRISCOE**, Chief Judge.

## **ORDER**

Complainant has filed a complaint of judicial misconduct against two district judges in this circuit. My consideration of this complaint is governed by 1) the misconduct rules issued by the Judicial Conference of the United States, entitled *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the "Misconduct Rules"); 2) the federal statute dealing with judicial misconduct, 28 U.S.C. § 351 *et seq.*, and 3) the "Breyer Report," a study by the Judicial Conduct and Disability Act Study Committee, headed by Supreme Court Justice Stephen Breyer, entitled *Implementation of the Judicial Conduct and Disability Act of 1980*. The Breyer Report may be found at: http://www.supremecourt.gov/publicinfo/breyercommitteereport.pdf. To the extent that there are any relevant prior decisions of the full Judicial Council of this circuit which are consistent with those authorities, they may also govern my consideration of this complaint.

Complainant has been provided with a copy of the Misconduct Rules, and the Rules are also accessible on the Tenth Circuit's web page at:

http://www.ca10.uscourts.gov/misconduct.php. In accord with those rules, the names of the complainant and subject judges shall not be disclosed in this order.

See Misconduct Rule 11(g)(2).

Complainant, while acknowledging that claims about the merits of a subject judge's decision are not cognizable as misconduct, *see* Misconduct Rule 11(c)(1)(B), takes issue with rulings by the subject judges in connection with two hearings held in an underlying case in which complainant is involved. Complainant contends that these rulings and the proceedings that resulted demonstrate conspiracy on the part of the judges. Complainant contends that the rulings and proceedings violated various constitutional rights and gave the opposing party a litigation advantage. Complainant alleges that a corporate entity controlled by complainant was given inadequate time to secure counsel before the second hearing.

While allegations of conspiracy can state valid claims of misconduct even when related to a judge's ruling, *see* Commentary to Misconduct Rule 3, these conspiracy claims fail because they lack support. The Misconduct Rules require complainants to support their allegations with "sufficient evidence to raise an inference that misconduct has occurred." *See* Misconduct Rule 11(c)(1)(D). The judges' rulings and the proceedings in the underlying case do not support a reasonable inference of conspiracy.

Accordingly, this complaint is dismissed pursuant to Misconduct Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the subject judges and the Judicial Conference Committee on Judicial Conduct and Disability. *See* Misconduct Rule 11(g)(2). To seek review of this order, complainant must file a petition for review by the Judicial Council. The requirements for filing a petition for review are set out in Misconduct Rule 18(b). The petition must be filed with the Office of the Circuit Executive within 35 days of the date of the letter transmitting this order. *Id*.

So ordered this 24th day of October, 2012.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe Chief Circuit Judge